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January 19, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, NW
Washington DC 20554

**Re: Application of BellSouth Corporation, et al. to Provide In-Region
InterLATA Services in the State of Louisiana, CC Docket 97-231,
Ex Parte Presentation by Marius Schwartz**

Dear Ms. Salas:

In its Reply Brief in the Louisiana § 271 proceeding,¹ BellSouth questions my objectivity as an expert for the U.S. Department of Justice (DOJ) on § 271 matters. It alleges that my goal is to protect AT&T from entry by the BOCs rather than to benefit consumers.² BellSouth's distortions are sufficiently serious that I feel compelled to set the record straight, both regarding the timing and disclosure of my involvement with AT&T and, more importantly, my substantive positions.

¹ Reply Brief in Support of Application by BellSouth for Provision of In-Region, InterLATA Services in Louisiana, In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 97-231, FCC, December 19, 1997.

² On p. 2 it writes: "... DOJ places principal reliance upon assessments by two retained consultants without acknowledging — or perhaps without knowing — that its consultants simultaneously are CLEC representatives. ... Professor Schwartz recently appeared before the Commission staff on behalf of AT&T, apparently arguing for restrictions on entry into AT&T's markets." After describing me as "... moonlight[ing] as a representative of AT&T..." (p. 109), it concludes: "Thus, Professor Schwartz's concern, articulated as DOJ's expert, reduces to a desire to save his client, AT&T, from losing market share." (p. 114).

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List A B C D E

My principal DOJ Affidavit was based on extensive investigation and analysis conducted since June 1996, and was filed in May 1997.³ Until then, I had not done any work for AT&T—or any other telecom company. In October 1997, AT&T asked me to work on the Telmex-Sprint proposed joint venture, a proceeding unrelated to § 271; I have not consulted and do not consult on § 271 matters for any parties other than DOJ. I accepted the Telmex assignment after confirming with DOJ that there would be no conflict of interest, since the position I articulated as a DOJ expert had been staked out independently and much earlier.⁴ Thus, BellSouth's insinuation that I was "moonlighting" without DOJ's knowledge while serving as its expert is a blatant misrepresentation of the facts.

BellSouth's allegation that I am watching out for the interests of AT&T at the expense of consumers is equally ludicrous. My affidavits on § 271 amply document why DOJ's Open Market Standard for authorizing BOC interLATA entry is, in fact, pro-competitive and beneficial to consumers. The Consumer Federation of America, for example, has cited my Affidavit favorably and extensively in its own § 271 filing.⁵

Grasping for straws, BellSouth tries to taint my objectivity by suggesting that in the Telmex matter I was simply trying to protect AT&T from foreign entry (see n. 1 above). This too is a gross misrepresentation. What I actually argued, in both the oral presentations to FCC staff which BellSouth cites and in my affidavit,⁶ is that entry by Telmex (or other *dominant* foreign carriers)—absent appropriate safeguards—could increase its ability to manipulate inefficiently the flow of international traffic and thereby harm both U.S. carriers *and consumers*.⁷ I recommended allowing entry, so as to tap any

³ "Competitive Implications of Bell Operating Company Entry into Long-Distance Telecommunications Services," Affidavit first submitted to the FCC on behalf of U.S. Department of Justice (DOJ) with DOJ's evaluation of SBC's application in Oklahoma, May 16, 1997 (available on the Internet at: www.usdoj.gov/atr/statements/Affiwp60.htm).

⁴ I filed a supplemental affidavit on behalf of DOJ in November 1997: "The 'Open Local Market Standard' for Authorizing BOC InterLATA Entry: Reply to BOC Criticisms," Supplemental Affidavit first submitted to the FCC on behalf of DOJ with DOJ's evaluation of BellSouth's application in South Carolina, November 4, 1997 (available on the Internet at: www.usdoj.gov/atr/statements/1281.htm). However, this Supplemental Affidavit contains no new positions—it rebuts criticisms and reiterates the validity of the original affidavit.

⁵ Reply Comments of the Consumer Federation of America, Application by BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, November 14, 1997, Part I, pp. 1, 23-24.; Part II, p. 5; Part III, pp. 4-11.

⁶ Marius Schwartz, "Competitive Concerns with Gaming of the International Settlements Process under Asymmetric Liberalization of International Telecommunications and Above-Cost Settlement Rates," Affidavit submitted on behalf of AT&T to FCC, in proceedings on Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, November 18, 1997. ("Foreign Participation Aff.")

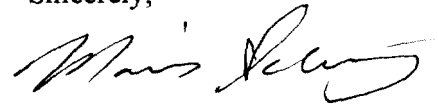
⁷ Entry by dominant foreign carriers "... could reduce competition and harm consumers—by enhancing the foreign carrier's ability to manipulate the International Settlements Process (ISP) through schemes such as call turnaround or re-originating calls through the U.S." (Foreign Participation Aff., p. 2) that inflate its termination revenues from U.S. carriers even absent an increase in genuine traffic from the U.S.. Consumers are

procompetitive potential, but conditional on lowering termination rates towards cost or adopting other safeguards against traffic manipulation.⁸ Contrary to BellSouth, steps such as reducing monopolistic termination rates would benefit not harm consumers.

In short, my positions on both § 271 and the Telmex matter were based on an independent economic analysis of the facts. It is unfortunate that a company of BellSouth's stature elects to resort to baseless personal attacks on my objectivity and integrity. We should all focus instead on the substantive issues of implementing Section 271's requirements so as to achieve the competitive goals of the Telecommunications Act.

Two copies of this *ex parte* presentation are being submitted to you for inclusion in the public record in this proceeding.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marius Schwartz".

Marius Schwartz
Professor of Economics

likely to suffer because, as my affidavit explained, traffic manipulation would typically raise the effective marginal cost to U.S. carriers of sending outbound calls (given the use of a proportionate-return system for allocating inbound traffic): "The increase in carriers' marginal costs [of sending calls], in turn, puts upward pressure on prices, an effect that would *harm also U.S. consumers.*" (*Id.*, p. 3, italics in original.)

⁸ "Thus, foreign entry should be encouraged, but subject to safeguards ... to address the risks to competition posed by such gaming." (*Id.*, p. 2.) "Reducing the settlement rate both diminishes the incentive to engage in such gaming, and mitigates the consequences..." (*Id.*, p. 32. See also pp. 4, 28, 31-32.)